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9

10 UNITED STATES DISTRICT COURT

11 FOR THE NORTHERN DISTRICT OF CALIFORNIA

12 GREGORY OLIVER, II,

13 Plaintiff,

14 vs.

15 CITY AND COUNTY OF SAN
FRANCISCO, a municipal corporation;
16 HEATHER FONG, in her capacity as
Chief of Police for the CITY AND
17 COUNTY OF SAN FRANCISCO; JESSE
SERNA, individually, and in his capacity
as a police officer for the CITY AND
18 COUNTY OF SAN FRANCISCO; and
19 San Francisco police officers DOES 1-25,
inclusive,
20

Defendants.
21

Case No. C07-02460 JL

**OPPOSITION TO MOTION TO
RELATE CASES**

Date Action Filed: May 8, 2007
Trial Date: None Set

1 **I. INTRODUCTION**

2 The Court has already ruled that the *Oliver*, *Maestrini*, and *Hwang* cases are not related. *See*
 3 Exhibit A. The *Myers* plaintiffs make no new argument regarding those cases, and it is unclear why
 4 they filed this duplicative motion.

5 Nor does the addition of the more recently filed *Myers* case affect anything. As with the
 6 other cases, *Myers* is its own case, with its own set of facts, with different types of force alleged,
 7 with a unique claim of race discrimination, and with an officer-defendant (Officer Gary Moriyama)
 8 who is not a defendant in any of the other cases. Moreover, because discovery is currently at
 9 different stages in different cases, there would be no efficiency gains by relating the cases. Indeed,
 10 quite the opposite is true. Finally, because the parties have consented to trial of this case before a
 11 Magistrate Judge in *Oliver* but not in the other cases, relating the cases would require reassignment
 12 of *Oliver* and thus require a different judge to remake the wheel that this Court has already made.

13 Plaintiffs are doing no more than assert that the cases are related because Officer Jesse Serna
 14 is a defendant in each case and because each case has a *Monell* claim — arguments that the Court
 15 already has rejected. These arguments continue to be unpersuasive, particularly in light of the
 16 Court's order bifurcating Oliver's *Monell* claim and staying *Monell* discovery. Given the
 17 dissimilarities among the cases and the differing procedural postures, they are not related, and the
 18 Court should deny the motion.

19 **II. FACTUAL BACKGROUND**

20 **A. Oliver Matter**

21 Gregory Oliver's allegations concern his arrest on August 20, 2006. On May 8, 2007, he
 22 filed a suit against the City and County of San Francisco, San Francisco Police Chief Heather Fong,
 23 in her official capacity, and Officer Jesse Serna. Oliver alleges that while officers were actively
 24 engaged in breaking up a large street fight, he was told to move from the scene. He claims that he
 25 was pushed back from the scene, that he tried to tell the officers that the wrong person was being
 26 arrested, and that he was ultimately hit with a baton and made to back up. He alleges that Officer
 27 Serna then used excessive force against him and arrested him. He claims that several officers then
 28 began to punch and knee him.

1 **B. Maestrini Matter**

2 Marco Maestrini alleges that he was unlawfully detained on October 28, 2006. On June 6,
 3 2007, he filed suit against the City, Chief Fong, in her official capacity, and Officer Serna.
 4 *Maestrini v. CCSF*, Case No. 07 2941 PJH. Maestrini alleges that he left a bar near closing time and
 5 approached officers who were allegedly using excessive force against other people. He claims that
 6 Officer Serna grabbed him, slammed him against a police vehicle, and told him to "shut up." He
 7 alleges that he was injured in the incident, that an ambulance was called, and that he was taken to the
 8 hospital where he refused treatment and was released. He does not allege that he was arrested.

9 **C. Hwang Matter**

10 Esther Hwang makes allegations about Officer Nelson Artiga and Officer Jesse Serna from
 11 an incident on May 12, 2007. *Hwang v. CCSF et al.*, Case No. 07 2718 WEB. On May 23, 2007,
 12 Hwang filed an action against the City, Chief Fong, in her official capacity, Officer Artiga, and
 13 Officer Serna. The lawsuit alleges that Officers Artiga and Serna unlawfully arrested her, that they
 14 used excessive force in doing so, and that unidentified officers made inappropriate sexual comments
 15 to her.

16 **D. Myers Matter**

17 Shawn and Sarah Myers allege that they were unlawfully arrested after they indicated that
 18 they would be witnesses to the allegedly unlawful arrest of another person. They have sued the City,
 19 Chief Fong, Officer Serna, and Officer Gary Moriyama. Shawn Myers alleges that he was beaten by
 20 officers. Sarah Myers alleges that an officer maced her. Plaintiffs allege that Officer Serna used
 21 racially derogatory language toward them. Shawn Myers was criminally charged, and his criminal
 22 case is set for trial in July 2008. If he is convicted, his false arrest claim will be precluded.

23 **E. The Court's Denial Of Motion To Relate.**

24 Plaintiff Oliver previously moved to relate his case with *Hwang* and *Maestrini*. (Myers had
 25 not yet been filed.) On August 14, 2007, this Court denied the motion and ruled that the cases were
 26 not related. *See Exhibit A* (document 16 on court docket). The order stated, among other things:

27 The Court reviewed the moving and opposing papers and concludes that the
 28 cases should not be related. They involve different plaintiffs. They involve
 different groups of defendants. They involve entirely distinct incidents
 occurring over a period of nine months. They involve different legal theories.

1 One case involves allegations of false arrest and use of a baton. Another
 2 involves allegations of an unlawful detention, but not an arrest, and the use of
 3 physical force. Yet another involves allegations against two named officers,
 4 one who is not alleged to have been involved in any other incident.

5 No judicial resources would be conserved by relating these cases. There
 6 would be no undue burden on the parties or the Court if they are not related.

7 Accordingly, the motion to relate cases is denied.

8 **F. Status Of The Cases**

9 As noted, *Myers* is a relatively new case. However, significant discovery has occurred in
 10 *Oliver* and *Hwang*. In both cases, the plaintiffs have been deposed. In *Oliver*, several percipient
 11 witnesses have been deposed. The parties have engaged in written discovery and motion practice.
 12 In *Oliver*, the Court bifurcated the *Monell* claim from the rest of the case and stayed *Monell*
 13 discovery. In other words, these cases are at very different stages.

14 **III. THE COURT SHOULD DENY THE MOTION TO RELATE.**

15 Plaintiffs must satisfy two requirements to have the four matters related: (1) The actions
 16 must concern substantially the same parties, property, transaction or event; and (2) It must appear
 17 likely that there will be unduly burdensome duplication of labor and expense or conflicting results if
 18 the cases are conducted before different judges. Civ. L. R. 3-12(a). Plaintiffs have not satisfied
 19 either requirement.

20 **A. Plaintiffs' Matters Concern Different Events**

21 Plaintiffs argue that the cases are related because they all name Officer Serna as a defendant
 22 and because they all raise a *Monell* claim against the City. These facts are not enough, as the Court
 23 has already concluded in previously rejecting this motion.

24 Here, the parties are not substantially the same. Five different plaintiffs have sued. While
 25 each sues Officer Serna and the City and County of San Francisco, Ms. Hwang has also named
 26 Officer Nelson, and the Myers have also named Officer Moriyama. Thus, the defendants are not the
 27 same.

28 In addition, the cases involve four completely different events that took place over a period
 29 of nine months, and the alleged conduct varies from case to case with respect to Officer Serna and
 30 other officers. There will be no overlap of the factual issues underlying the three events.

1 Nor does the existence of *Monell* claims in each case alter the conclusion that these cases are
2 not related. First, before *Monell* liability can attach, a plaintiff must establish that his or her
3 constitutional rights were violated. *City of Los Angeles v. Heller*, 475 U.S. 796, 799 (1986). Thus,
4 relating the cases simply based on the *Monell* claims is putting the cart before the horse, since
5 *Monell* does not even come into play until there has been a determination that an underlying
6 constitutional violation occurred. Second, the *Monell* claims may vary. For instance, Hwang's
7 allegations of alleged sexually charged comments will require a different *Monell* inquiry from
8 allegations of excessive force. And, Hwang's allegations against Officer Nelson may also require a
9 separate *Monell* analysis, depending on the legal theory advanced by her. Thus, merely stating that
10 each case asserts a *Monell* claim does not necessarily mean that all *Monell* claims will rise and fall
11 together. In addition, as noted above, the *Monell* claim in *Oliver* has been bifurcated, and *Monell*
12 discovery has been stayed.

13 **B. Unnecessary Duplication Will Not Result**

14 There is no danger of burdensome duplication of labor and expense or conflicting results
15 where the main issue in each case involves the resolution of the underlying constitutional claim,
16 and/or associated state law claims. Those claims will require discovery into the events of each
17 evening, including party and non-party witnesses. There will be no overlap, so a decision about how
18 to proceed on such event-specific discovery will not bleed over from one case to the next.

1 **IV. CONCLUSION**

2 Plaintiffs have not made the necessary showing to relate the cases, particularly in light of the
3 Court's previous rejection of essentially the same motion. The Court should deny the motion.

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5 Dated: June 25, 2008

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